

# **BACKGROUND PAPER FOR HEARING**

## **JANUARY 6, 2004**

### **LANDSCAPE ARCHITECTS TECHNICAL COMMITTEE**

#### **IDENTIFIED ISSUES, QUESTIONS FOR THE COMMITTEE, AND BACKGROUND CONCERNING ISSUES**

**GENERAL INFORMATION:** California started the regulation of the practice of landscape architecture in 1953 with the formation of the Board of Landscape Architects (BLA). In 1997, the BLA was sunsetted by the California Legislature and restructured in 1998 as the Landscape Architects Technical Committee (Committee) under the purview of the California Architects Board (CAB). The Committee licenses more than 3,000 of the 20,000+ licensed landscape architects in the United States. California has both a practice act, which precludes unlicensed individuals from practicing landscape architecture, and a title act, which restricts the use to the title "landscape architect" to those who have been licensed by the Committee.

Landscape architects design complex projects and provide a wide range of services that impact public health, safety, and welfare, as well as the environment in which we live, work, and play. These services include site planning and development, environmental restoration, regional landscape planning, urban/town planning, park and recreation planning, ecological planning and design, landscape design, code research and compliance, cost analysis, and historic preservation. A landscape architect seeks to achieve a balance between preservation and the use and management of the country's natural resources.

**PRIOR SUNSET REVIEW:** When BLA was last reviewed by the Joint Legislative Sunset Review Committee (JLSRC) seven years ago (1996-97), the JLSRC recommended that the BLA not be continued as a separate agency and all of its duties, powers, and functions should be turned over to the Department of Consumer Affairs (DCA) until such time DCA had an opportunity to investigate whether an alternative would suffice. Numerous findings by the JLSRC led to this recommendation, including: (1) the BLA had not identified any specific objectives for its individual programs; (2) the BLA had not established professional standards for its licensees, nor specific codes of professional ethics or conduct; (3) the percentage of the BLA's budget spent on enforcement was consistently low; (4) it was argued that the BLA was attempting to stiffen its educational requirement for applicants to the examination and thereby creating an artificial barrier to entry into the profession; (5) there were very few complaints filed against licensed landscape architects, and most of those were from licensees for unlicensed practice rather than from the public; (6) the practice of landscape architecture was not clearly defined so as to determine licensed versus unlicensed activity; (7) the BLA made little use of its citation authority against licensees for violations of the licensing act; and (8) the BLA had taken little, if any, action against licensees for violations of the licensing act.

**BACKGROUND:** The BLA ceased to exist on July 1, 1997, and its duties, powers, purposes, regulatory programs, responsibilities and jurisdiction were succeeded to and vested with DCA. DCA recommended CAB as the appropriate oversight agency due to the similarities between the two professions and the ~~Boards'~~ Boards' regulatory programs. DCA began discussions with CAB and other interested parties on possible organizational structures for regulating landscape architecture practice in California. In April 1997, the groups reached consensus and CAB unanimously supported legislation to establish the Committee under its jurisdiction. The legislation establishing the Committee was passed by the Legislature with an effective date of January 1, 1998.

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**SIGNIFANT CHANGES SINCE LAST REVIEW:** In September 2003, the Committee submitted its required sunset report to the JLSRC. In this report, information of which is provided in Members' binders, the Board described actions it has taken since the Board's prior review. Over the course of the last six years, the Committee has, among other things:

- Established standards and programs essential for public protection; adopting of CCR 2670 (Rules of Professional Conduct); amendments to Disciplinary Guidelines, etc.;
- Created a regulatory system that effectively carries out the Committee's mission
- Develop awareness of the Committee and the profession it regulates (outreach efforts to public agencies, firms/businesses, associations, landscape architectural schools, etc.)
- Reduced barriers to California licensure for candidates and out-of-state licensees seeking reciprocity. This was accomplished by returning to the administration of the national licensing examination;
- Conducted annual strategic planning sessions;
- Made substantive legislative and regulatory changes;
- Enhanced public awareness by creating a Web site, a quarterly newsletter, and three consumers' guides for selecting a landscape architect.
- Created a candidate handbook to assist individuals preparing for licensure as landscape architects;
- Created a PowerPoint presentation on the licensing process for students in landscape architectural programs;
- Created an Action Plan, which provides the framework for the activities the Committee performs in promoting and meeting its Strategic Plan goals and objectives;
- Created a Communications Plan as a tool for tracking projects related to expanding and improving communication efforts with constituencies;
- Appointed a liaison to CAB's Regulatory and Enforcement Committee to keep abreast of issues that affect both programs; and
- Appointed a technical consultant to the Committee to assist staff in responding to scope of practice inquiries and updating the Landscape Architects Practice Act.

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The following are unresolved issues pertaining to the Committee, or areas of concern for the JLSRC, along with background information concerning the particular issue. There are also questions that staff has asked concerning the particular issue. The Committee was provided with these issues and questions and is prepared to address each one if necessary.

## CURRENT SUNSET REVIEW ISSUES

### COMMITTEE MEMBER ISSUES

**ISSUE #1:** The Committee currently is composed of five members. Each member must be a licensed landscape architect.

**Question #1 for the Committee:** *Should there be public members on the Committee? Does the Committee view greater public representation as beneficial to itself and to the consumer? Would the Committee support legislative efforts to increase public membership?*

**Background:** Over the years, requiring closer parity between public and professional members is consistent with JLSRC and DCA recommendations for other boards that have undergone sunset review. Since any regulatory program's primary purpose is to protect the public, increasing the public's representation on this Board assures the public that the profession's interests do not outweigh what is in the best interest of the public.

**ISSUE #2:** The Committee is at a bare quorum.

**Question #2 for the Committee:** *How long has the Committee had only the minimum number of members in order to function? What impact has this had on the Committee and its programs?*

**Background:** The Committee currently has only three of its five members and it has been that way for some time.

### LICENSURE ISSUES

**ISSUE #3:** To qualify for licensure a candidate must have six years of education and experience. A review of this requirement was to be completed by the Department.

**Question #3 for the Committee:** *Did DCA review the education/experience requirement as recommended? What has the Committee done to review the education/experience requirements?*

**Background:** To become licensed as a landscape architect in California, a candidate must be over the age of 18 and have a combination of six years education and training/experience in the practice of landscape architecture. Additionally, the candidate must pass the LARE, a comprehensive national examination that tests a candidate's knowledge, skills, and abilities as they relate to the profession of landscape architecture. Candidates must also pass the California Supplemental Examination, which tests for areas of practice unique to California.

When the BLA enacted the current educational requirements, it was their belief that a degree in landscape architecture best met the needs for addressing the emerging trends and challenges in the profession. However, as part of its mandate to ensure the public health, safety, and welfare, the Committee continues to recognize the need to regularly update and review the educational/training requirements for application for the examination. Toward this end, the Committee discussed the need to review the current educational/training requirements for examination along with those requirements of other CLARB member jurisdictions, and other like design boards. Similarly, the Committee also recognizes the importance of minimizing barriers of entry into the practice of landscape architecture. The Committee had preliminary discussions on its educational standards in 2002 and initially determined that the current standards continue to be appropriate at this time. During the Committee's 2003 Strategic Planning meeting the Committee renewed its commitment to the issue and assigned an objective to reassess this issue in the 2003 Strategic Plan, to be completed by January 2005.

In the last review of the BLA, it was recommended that the DCA review the six-year education and experience requirement to determine if it is justified. It does not appear that this review occurred.

**ISSUE #4:** As directed by the JLSRC, a survey of public agencies was taken to determine whether non-licensure would limit their ability to contract with a landscape architect.

**Question #4 for the Committee:** *What did the Committee learn as a result of this survey? How does the Committee plan on using this information?*

**Background:** The 1996 JLSRC's findings instructed the DCA, which was assuming the BLA's functions, to survey public agencies to determine whether non-licensure would limit their ability to contract with a landscape architect. In January 2002, the LATC surveyed public agencies to determine if the JLSRC's 1996 finding was still an issue and to better understand the current legal requirements and trends in the practice of landscape architecture.

As to the question raised in the JLSRC findings, many officials indicated that they would experience difficulty in obtaining landscape architectural services without regulation or licensure. Specifically, 68 percent of parks and recreation directors stated that, if landscape architects did not have a license, it would negatively impact the agency's ability to secure landscape architectural services. Approximately 41 percent of public works directors agreed.

The Committee indicated that outside of the requirement for Sunset Review, the survey helped it gain a better understanding of the interaction and perception of landscape architects with regard to public agencies.

**ISSUE #5:** It is unclear which recommendations resulting from the Market Conditions Focus Groups (Focus Groups) were considered or are going to be considered by the Committee.

**Question #5 for the Committee:** *Why did the Committee conduct the Focus Group discussions? Please describe the results of Focus Groups. How many issues did the Focus Groups concentrate on? Of all of the findings, what action or plan of action did the Committee take?*

**Background:** In Spring 2001, the Committee conducted five constituency focus group sessions. The focus groups were designed to serve as the first stage in the Market Conditions Assessment project identified in the Committee's 2000 Strategic Plan. Each focus group brought together representatives from a specific ~~area of professional practice~~ stakeholder group: landscape architects with varied years of licensure and experience; allied professionals; insurance agencies; and public agencies.

Participants also provided feedback on the Committee's role, effectiveness, and recommended improvements, with an emphasis on the specific elements of the Committee's mission.

The Committee has reviewed the findings and attempted to determine which areas are within Committee's purview, and which are the responsibilities of CLARB, ASLA, local public agencies, the marketplace, or a combination thereof. The Committee has indicated that it will use the Focus Group findings to "identify potential issues that affect the regulation of the practice of landscape architecture and ultimately the protection of the public health, safety, and welfare."

## **BUDGETARY ISSUES**

**ISSUE #6:** The Committee made a \$1,225,000 loan to the General Fund in February 2003. As a result, pending regulations to reduce fees were abandoned.

**Question #6 for the Committee:** *Please describe the sequence of events leading up to the withdrawal of regulations to reduce renewal fees. How has this loan affected the Committee's fund balance? Due to the reduction of funds in reserve and a continuing decline in the future, does the Committee anticipate an increase in fees? Has a repayment schedule been requested by the Committee? If so, what is it? Please explain the overall impact that budget cuts and the hiring freeze has had on the Committee, in particular the licensing and enforcement programs.*

**Background:** Due to a 21-month reserve surplus, the Committee started the process of reducing renewal fees via regulation in order to achieve a reserve balance closer to three to six months. It was determined that reducing the renewal fee to \$50 for the two-year period would meet this goal.

Given the impending loan, the Committee submitted a Notice of Decision Not to Proceed with Rulemaking Action to the Office of Administrative Law to formally withdraw the fee reduction rulemaking. In October 2003, \$1,225,000 was transferred to the General Fund from the Committee.

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**ISSUE #7:** The Committee spends over 50% of its budget on its examination program. Further, the cost of the national exam continues to rise forcing the Committee to obtain additional funding to cover the increase in cost.

**Question #7 for the Committee:** *Please expand upon the reason for the large portion of the Committee's budget being spent on examination costs. How much has the cost of the national exam increased over the past four years? Why the substantial increase in the cost of the national exam? Is the Committee planning on setting forth regulations to increase exam fees?*

**Background:** The Committee administers the Landscape Architects Registration Exam (LARE), the national licensing examination for candidates seeking licensure as a landscape architect. The Committee purchases the LARE from the Council of Landscape Architectural Registration Boards (CLARB). Examination fees are set in regulation and established at an amount needed to cover the actual cost of purchasing and administering the LARE.

The Committee received an augmentation of \$52,000 in its exam contract baseline for FY 2002/03 and ongoing, which increased the Committee's existing examination expenditure authority to \$187,395. In October 2002, CLARB notified the Committee of an increase in examination fees for the June 2003, December 2003, June 2004, December 2004 and June 2005 examinations. As a result of the increase in examination fees and the projected increase in the candidate population, the Committee submitted a Spring Finance Letter in February 2003, proposing an augmentation to the exam contract baseline. With the signing of the Budget Bill in July 2003, the Committee received an augmentation of \$115,000 for FY 2003/04, (increasing the exam expenditure authority to \$302,395) and an additional \$73,000 for FY 2004/05 and ongoing, (increasing the exam expenditure authority line item to \$375,395).

## **EXAMINATION ISSUES**

**ISSUE #8:** The California specific examination is a take-home, 30-question examination. It is unclear if this exam is helpful in testing for knowledge of California law and practice.

**Question #8 for the Committee:** *What is the purpose of the take-home examination? How is it useful? Is the Committee planning any changes in the future in the way that the exam is administered?*

**Background:** In addition to the national exam, candidates for licensure in California must also take and pass with at least 90%, a 30-question California Supplemental Examination (CSE). The CSE examination verifies examinees understand laws and subject areas that are unique to California to make sure they can safely practice landscape architecture in this state. The examination is completed at home and returned to the Committee for scoring. The examination content is derived from the previous California examination that was administered from 1997-1999, a 1997 Committee occupational analysis, the Landscape Architects Practice Act, and California laws pertinent to the practice of landscape architecture (particularly pertaining to fuel modification and water conservation).

Prior to June 2000, the California section was administered every six months with the national examination. Beginning June 2000, the CSE, which is administered throughout the year, replaced the California section. Since this change, the passage rate for this take-home has been 100%.

**ISSUE #9:** The LARE has five sections and the passage rates for two sections are still consistently low. This exam has had a history of low passage rates.

**Question #9 for the Committee:** *Please discuss the passage rates for the LARE, particularly for Sections C & E. What does the Committee attribute the low scoring on Sections C & E? Does the Committee foresee any changes in the way that the national exam is administered? If the exam were computerized, what impact would it have on pass rates? What does the Committee think about creating a state-only examination?*

**Background:** The LARE is a 21-hour, five-section examination given over a three-day period. Each of the five sections of the LARE is designed to test for minimum competency in a specific area of knowledge. The five test sections areas are:

Section A – Legal and Administrative Aspects of Practice  
Section B – Analytical Aspects of Practice  
Section C – Planning and Site Design  
Section D – Structural Considerations and Materials and Methods of Construction  
Section E – Grading, Drainage, and Stormwater Management

The trend over the past four years shows that the passage rates for both Sections C and E have been low – sometimes as low as 19%.

In the early 1990's, the LARE had extremely low passage rates – 9% in 1991 and 23% in 1992. In fact, low passage rates was one of the reasons the BLA discontinued the administration of the LARE in 1993 and instead administered an examination developed solely for California for a few years.

## **ENFORCEMENT ISSUES**

**ISSUE #10:** Over the past four years, the Committee has spent an average 29% of its budget on enforcement. However, the Committee has indicated in its report that it may experience an increase in enforcement costs “due to the increase in complaints and enforcement actions taken.”

**Question #10 for the Committee:** *What does the Committee attribute the low percentage of budgetary expenditures on enforcement to? Please explain the possibility of increased enforcement costs.*

**Background:** The Committee spends a smaller percentage of its budget on enforcement overall than most other boards. Approximately 29% of its budget was spent on enforcement while other boards typically spend on 60%.

The Committee has indicated that it may experience an increase in enforcement costs, however it is unclear as to what that means.

**ISSUE #11:** The Committee's cite and fine authority is rarely used and when it is, it is often against unlicensed individuals. Further, the Committee receives very few complaints annually and no disciplinary actions have been taken in the past four years.

**Question #11 for the Committee:** *To what does the Committee attribute the few number of citations and fines issued? Please discuss the number of complaints and the disciplinary actions taken by the Committee.*

**Background:** In FY 2000/01, the Committee issued a total of five citations (two to licensees for negligence and three to unlicensed individuals). Again in FY 2002/03, the Committee issued a total of five citations (two to licensees for negligence and three to unlicensed individuals). In both FY 1999/00 and FY 2001/02, the Committee issued one citation.

Although complaints have increased since the last review, the Committee still only receives an average of 40 complaints per year.

In the last four FYs, there have been no disciplinary actions taken.

### **SCOPE OF PRACTICE ISSUE**

**ISSUE #12:** Business and Professions Code Section 5641 continues to cause confusion as to unlicensed activity and exemptions/exceptions to the Landscape Architect Practice Act.

**Question #12 for the Committee:** *Please discuss exemption/exception to the Act and issues surrounding it. What has the Committee done to address this problem? Please outline the Committee's proposed amendments to B&P Code 5641.*

**Background:** Business and Professions Code 5641 states that any person shall not be prohibited from "making plans or drawings for the selection, placement, or use of plants when the execution of such plans or drawings does not affect the public health, safety and welfare" or from "making any plans, drawings or specifications for any property owned by that person."

In light of the ongoing confusion, the Committee established a Scope of Practice Exceptions and Exemptions Task Force (Task Force) to examine the language for the scope of practice and review the current exemptions for unlicensed activity. The Task Force reviewed the current scope of practice exceptions and exemptions of the Landscape Architects Practice Act, as well as the exemptions of the Architects Practice Act, Professional Engineers Practice Act, and Contractors License Law. After an initial review of these statutes, the Task Force recommended



changes be made to BPC 5641, as it relates to unlicensed design practitioners and single-family residential design and allied design professionals.

At the Committee's December 2002 meeting, the Committee discussed the recommendations made by the Task Force, as well as the research conducted by staff relative to enforcement of the current exceptions and exemptions. The Committee determined that the current language of BPC 5641 could be clarified by separating the allied design professionals into different subsections of the statute.

### **REPORTING REQUIREMENT ISSUE**

**ISSUE #13:** Business and Professions Code Section 5678.5 requires insurance companies to report any settlement or arbitration award in excess of \$5000. It seems that this law is not adhered to.

**Question #13 for the Committee:** *What has the Committee done to ensure compliance with this code section? What reporting has been provided from insurance companies? Has the Committee worked with the Department of Insurance on this issue? When does the Committee expect to receive the Attorney General opinion that was requested? Is the Committee receiving compliance from other statutory reporting requirements (B&P Code Sections 5679.5 & 5680.5)?*

**Background:** Business and Professions Code Section 5678.5 requires insurance companies who provide liability insurance to a landscape architect to send a complete report to the Committee/CAB on any settlement or arbitration award in excess of \$5,000 of a claim or action for damages caused by the license holder's fraud, deceit, negligence, incompetence, or recklessness in practice.

However, it seems that insurance companies offering professional liability insurance are failing to comply with this law.

### **DISCLOSURE POLICY ISSUE**

**ISSUE #14:** At its July 2003 meeting, the Committee voted to expand its consumer complaint disclosure policy.

**Question #14 for the Committee:** *Is the Committee's revised policy consistent with the "Recommended Minimum Standards for Consumer Complaint Disclosure" issued by DCA? Does it deviate from the DCA's recommended standards? If so, how? When does the Committee plan on having the proposed changes to its disclosure policy in place?*

**Background:** On July 16, 2002, the DCA distributed its “Recommended Minimum Standards for Consumer Complaint Disclosure.” Other boards are in varying stages of reviewing their current disclosure policies in light of this document and the suggested standards to be followed.

## **OUTREACH ISSUE**

**ISSUE #15:** According to studies conducted by the Committee, public entities and the public are unaware or unclear of the Committee’s role.

**Question #15 for the Committee:** *What has the Committee done to educate consumers and public entities of its existence and role? Please detail any outreach efforts that the Committee has undertaken.*

**Background:** Public agency surveys conducted by the Committee revealed that many public officials (49%) were unaware that the Committee is responsible for the licensing and regulating the practice of landscape architecture in California. The survey also underscored the need for outreach to public agencies to strengthen collaboration and increase the public agencies’ awareness of the Committee and the services it provides.

Further, a review of inquiries to the Committee’s office also suggests that the public may be unclear on practice parameters or that landscape architecture is regulated in California.